

STATE OF MICHIGAN
COURT OF APPEALS

DAWN DUBUC,

Plaintiff-Appellant,

v

DR. ADEL ALI EL-MAGRABI and QUALIFIED
MEDICAL EXAMINERS, INC.,

Defendants-Appellees.

UNPUBLISHED

September 14, 2010

No. 287756

Wayne Circuit Court

LC No. 07-727798-NO

Before: SAWYER, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's orders granting defendants summary disposition of plaintiff's tortious interference with a contract claim pursuant to MCR 2.116(C)(8), and summary disposition of plaintiff's defamation claim pursuant to MCR 2.116(C)(10). We affirm.

This action arises from plaintiff's termination of employment at Ford Motor Company (Ford), and disqualification of disability and medical insurance benefits under Ford's disability plan for salaried employees, after an independent medical evaluation (IME) requested by Ford and conducted by defendant Dr. Adel Ali El-Magrabi¹ resulted in an unfavorable report, which stated that plaintiff lacked "creditability" and was uncooperative during the IME.

The submitted evidence discloses that plaintiff was injured in an automobile accident on September 3, 2003. She was approved for medical and disability benefits under Ford's Salaried Disability Plan and was determined to be disabled by the Social Security Administration. According to plaintiff's deposition testimony, she was diagnosed with a closed head injury and suffered from pain and cognitive difficulty, including short-term memory problems, after the accident. She worked for a while after the accident but discontinued working in May 2004 because of pain. At some point after that, Ford requested that plaintiff submit to an IME by defendant Dr. El-Magrabi. Plaintiff attended the evaluation on November 17, 2006,

¹ As used in this opinion, the singular term "defendant" shall refer to Dr. El-Magrabi only.

accompanied by her attorney, who planned to remain with plaintiff during the history portion of the evaluation. Plaintiff also recorded the conversation without defendant's knowledge.

The parties dispute what occurred during the evaluation. According to plaintiff, defendant repeatedly interrupted her and would not allow her to finish her answers to his questions. She claimed that after approximately 15 minutes, defendant "yelled" at her and asked, "Why don't you listen to me?" Her attorney responded, "She is, go ahead. Go ahead, Doctor. I won't say anymore." At that point, defendant ended the evaluation and refused to continue.

Defendant claimed in his deposition that he stopped the evaluation "because I was not getting comprehensive answers . . . that would make any sound evaluation." He admitted that there was no way for him to determine if plaintiff was being truthful and also stated that he could not determine whether plaintiff had real memory problems because "I don't evaluate these cases. I don't evaluate closed head injury, so I wouldn't be able to give a solid opinion related to that." Defendant also acknowledged that the only time plaintiff and her attorney answered questions at the same time was "near the end . . . when I terminated the exam."

In a report to UniCare, the company that handled Ford's disability claims, dated November 17, 2006, defendant stated that the IME "was terminated after several attempts to procure information from [plaintiff]." He further stated:

[Plaintiff] elected to have the examination done with her lawyer present with her in the examination room. During the interviewing process, I was not able to secure any meaningful history from her. It was a distraction with her and her lawyer talking at the same time. I had advised her attorney that he could stay but that she would have to be the person who gave the history and answered the questions posed. During this time period Ms. Dubuc would not answer the questions with any creditability, she did direct her conversation to the attorney present in the examination room and I was unable to complete my history or physical examination. . . .

After several attempts to get a history and repeated attempts to have her answer my questions without the help of her attorney, I terminated the evaluation.

On May 8, 2007, Ford sent plaintiff a letter advising her that her disability leave of absence was "not authorized" and that she would be terminated if she did not report for work with clearance from her physician within five days. The letter further stated that plaintiff's disability compensation had been discontinued and, if she did not return to work, her employment would be retroactively terminated to December 16, 2006, the last approved leave day, and she would be required to return any salary or disability benefits she had received for any disability leave that was not justified.

On June 15, 2007, the UniCare disability claims examiner sent a determinations letter to plaintiff's attorney, which stated, in pertinent part:

On November 17, 2006, your client was required, as a condition of continued eligibility, to provide appropriate medical certification of her claim condition and to submit to an examination by a physician designated by it for the

purpose of determining whether to continue payment of Disability Benefits. On November 17, 2006, Ms. Dubuc physically attended her scheduled exam, and was represented by council [sic]. While Ms. Dubuc and council [sic] were present for the exam as scheduled, UniCare's Independent Medical Examiner (Dr. El-Magrabi) was not allowed to procure medical information relative to Ms. Dubuc's condition.

UniCare was not allowed to obtain appropriate medical certification of her claim condition, thus the eligibility requirements of the Salaried Disability Plan have not been met. . . .

Because UniCare believed that plaintiff had not cooperated with the IME, her benefits were terminated effective November 17, 2006, and she was required to repay benefits she had received after that date.

Plaintiff thereafter filed this action against defendant and Qualified Medical Examiners, Inc. (QME), alleging causes of action for "tortious interference with contract/fraud," "libel/slander," and "negligence." The trial court granted defendants summary disposition of the tortious interference claim pursuant to MCR 2.116(C)(8), but allowed plaintiff to conduct discovery on her defamation claim. Following discovery, the court granted defendants summary disposition of the defamation claim pursuant to MCR 2.116(C)(10). Plaintiff now challenges the trial court's dismissal of both of these claims.

I. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(8) "tests the legal sufficiency of the complaint," "allows consideration of only the pleadings," and "should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right to recovery." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

A motion brought under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. *Singerman v Muni Service Bureau*, 455 Mich 135, 139; 565 NW2d 383 (1997). The court must consider the pleadings, affidavits, depositions, and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden*, 461 Mich at 119-120; *Singerman*, 455 Mich at 139. "Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001).

II. TORTIOUS INTERFERENCE WITH A CONTRACT

"The elements of tortious interference with a contract are: (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Health Call v Atrium Home & Health Care Services*, 268 Mich App 83, 89-90; 706 NW2d 843

(2005). “The ‘improper’ interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiffs’ contractual rights or business relationship.” *Advocacy Org for Patients & Providers v Auto Club Ins Ass’n*, 257 Mich App 365, 383; 670 NW2d 569 (2003), aff’d 472 Mich 91 (2005). “In interpreting the requirement that the defendant’s wrongful conduct be for the purpose of invading the contractual rights or business relationship of another person, this Court has developed a rule that a defendant is not liable for tortious interference of contract where he is motivated by legitimate personal or business interests.” *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990).

The trial court did not err in dismissing plaintiff’s tortious interference claim under MCR 2.116(C)(8). Although plaintiff’s complaint alleges the existence of a contract between plaintiff and Ford regarding disability benefits, and a breach of that contract by Ford, her complaint does not set forth “an unjustified instigation of the breach by the defendant.” *Health Call*, 268 Mich App at 89-90. The complaint alleges that Ford requested that plaintiff undergo an IME with defendant Dr. El-Magrabi, which was “arranged, scheduled and coordinated” by defendant QME, and that Ford “utilized” defendants “to determine whether Plaintiff Dawn DuBuc was disabled from her employment with Ford Motor Company.” Even if Dr. El-Magrabi may have been negligent in his performance of the IME, and his communication to UniCare may have contained inaccuracies and misrepresentations, the conduct of both defendants was motivated by a legitimate business interest, which plaintiff’s complaint acknowledges. Because defendants were motivated by a legitimate business interest, they cannot be held liable for tortious interference with plaintiff’s contractual relationship with Ford, *Wood*, 186 Mich App at 500, and plaintiff’s claim is “unenforceable as a matter of law.” *MacDonald*, 464 Mich at 332.²

III. DEFAMATION

“The elements of a defamation claim are: (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged communication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication.” *Mitan v Campbell*, 474 Mich 21, 24; 706 NW2d 420 (2005). “A communication is defamatory if, under all the circumstances, it tends to so harm the reputation of an individual that it lowers the individual’s reputation in the community or deters others from associating or dealing with the individual.” *Kefgen v Davidson*, 241 Mich App 611, 617; 617 NW2d 351 (2000); see also *Nuyen v Slater*, 372 Mich 654; 127 NW2d 369 (1964) (letter to state health department critical of actions of local health department employee, including allegations of prejudice, not defamatory in light of this definition). “If a statement cannot be reasonably interpreted as stating actual facts about the plaintiff, it is protected by the First Amendment” as

² As defendants acknowledge on appeal, the circuit court engaged in some impermissible fact-finding in granting summary disposition under MCR 2.116(C)(8) on this claim. Nonetheless, the court did not err in finding that the claim alleged was unenforceable as a matter of law, and this Court will not reverse a trial court’s decision where the right result is reached. *Zdrojewski v Murphy*, 254 Mich App 50, 70-71; 657 NW2d 721 (2002).

an expression of opinion. *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). The “court may decide as a matter of law whether a statement is actually capable of defamatory meaning.” *Id.* at 619. While there are serious questions posed in this case regarding whether defendant’s statements constitute statements of fact or opinion and whether defendant’s statements are protected by a privilege, and whether such privilege would be absolute or qualified, we need not reach those questions. Rather, we are satisfied that, as a matter of law, the statements cannot be given a defamatory meaning.

In determining whether a statement is capable of defamatory meaning, it is appropriate to look to the circumstances under which the statement is made. See *Sawabini v Desenberg*, 143 Mich App 373, 380; 372 NW2d 559 (1985). In *Sawabini*, the Court concluded that the communication, a letter, when read as a whole, in light of the circumstances in which it was written, the purpose of the communication and the intended audience, was not defamatory because it did not reflect upon the plaintiff’s reputation. *Id.*

The communication in the case at bar was intended for a very narrow audience and a very specific purpose, whether defendant could medically substantiate plaintiff’s disability claim. It was not intended to, nor did it, reflect upon plaintiff’s reputation. While an inaccurate communication from defendant to plaintiff’s employer may have given rise to inappropriate action by the employer and liability because of that, it does not constitute defamation. In other words, plaintiff may have a remedy, it just is not in the way of a defamation claim against defendants.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Henry William Saad